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ORIGINAL

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of

Creation of Event Radio Services

MB Docket No.:  
RM-

RECEIVED - FCC

OCT - 3 2008

Federal Communications Commission  
Bureau / Office

To: Chief, Media Bureau  
Attn: Chief, Audio Division

FILED/ACCEPTED

OCT - 3 2008

Federal Communications Commission  
Office of the Secretary

**PETITION FOR RULEMAKING**

Sounddec LLC ("Petitioner")<sup>1</sup>, by its undersigned counsel, requests that the Federal Communications Commission ("FCC" or "Commission"), pursuant to 47 C.F.R. §1.401, initiate a rulemaking to establish a new service in the FM band – Event Radio Services ("ERS"). ERS would provide an invaluable service to the public interest, providing an efficient, innovative use of the FM band enabling event attendees to follow action closer than ever before through real time broadcasts. In support of this Petition for Rulemaking, Petitioner shows the following:

**I) BACKGROUND**

1. Technology has dramatically changed the experience at sporting events, concerts, and other live events. In many venues, fans can vote in interactive polls from their seats, and watch high quality video replays on high-definition scoreboards and/or monitors throughout the stadium. Play-by-play broadcasts are often pumped into concession stand areas and restrooms. ERS is the next step enabling technology to dramatically change the amount and quality of information made available to live event

<sup>1</sup> Sounddec LLC is a Delaware LLC which is a subsidiary of Sounddec Ltd., a British company, which provides Event Radio Services at various international venues.

attendees. Through the use of patented portable receivers at event venues, attendees would be able to enjoy real time play-by-play/commentary from a variety of analysts.

2. The benefit of ERS is best conceptualized in the context of a sporting event. ERS would provide fans the opportunity to listen to the live radio play-by-play broadcast of a game synched perfectly to the action. Attendees could select either the home or away team broadcasts, giving fans traveling long distances an opportunity to enjoy analysis of the game from their hometown broadcasters. ERS could also serve as an integral and important addition to the Commission's public safety efforts, creating a reliable means of communicating emergency safety messages to a large number of people. Event attendees typically relying on public announcements that may or may not be audible in emergency situations would have access to the latest information broadcast directly into their ERS earpiece.

3. ERS is not a novel concept. Attempts were made to launch similar services in the 1990's, and ERS services have been successfully introduced throughout Europe.<sup>2</sup> The United States is now significantly lagging behind the United Kingdom in this area, as the British regulatory body, Ofcom, has been offering and expanding the availability of "Restricted Service Licenses" ("RSLs") for both radio and television.<sup>3</sup> Ofcom provides both short-term and long-term RSLs.<sup>4</sup> The short-term RSLs are typically issued on a first-come, first-served basis for a maximum of 28 days to enable

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<sup>2</sup> Among the countries offering a prolific number of ERS or "Restricted Service" licenses are France, Germany, and Australia. Perhaps the biggest success story is England, where short and long-term restricted radio licenses have been offered for nearly two decades.

<sup>3</sup> Ofcom, *Restricted Service Licences: Notes for Applicants; Notes of Guidance for short-term RSLs, long-term RSLs and ADS-RSLs*.

<sup>4</sup> *Id.*

ERS coverage of a wide variety of special events.<sup>5</sup> Each applicant is limited to a maximum of two licenses per year, with a minimum four-month gap between the end of the first and the beginning of the second license.<sup>6</sup> Long-term RSLs are issued for a maximum of five years to provide service at a specific site such as a sports arena.<sup>7</sup>

4. Attempts to launch ERS in the United States – the National Hockey League and others filed Petitions in the 1990's<sup>8</sup> urging the Commission to commence a Rulemaking – have been unsuccessful.<sup>9</sup> A formal procedure enabling ERS providers to obtain FM band authorizations has yet to be established. Those requesting authority to provide ERS have been forced to rely on an ad hoc system of special temporary authority requests in the absence of rules governing the service. Because of the significant advances in technology over the last decade, ERS can now be implemented efficiently and effectively, living up to its potential as a major asset to the communications industry.

5. The FM band provides an obvious and optimal platform for ERS. It features favorable propagation characteristics, it is proven and familiar to ERS providers, its chips are widely available, and it is the least expensive option among viable alternatives. The creation of a new ERS service in the FM band would provide a

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<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See *In re Indoor Sports and Entertainment Radio Service, Petition for Rule Making*, 14 FCC Rcd. 11337 (April 2, 1999) [hereinafter NHL Petition].

<sup>9</sup> The NHL's Petition was filed after similar proposals were referenced in the Commission's *Notice of Proposed Rulemaking* in the proceeding that led to establishment of Low Power FM (LPFM) service. The Commission declined to consider the ERS petitions in its LPFM proceeding, stating that the services proposed "are sufficiently different from what is contemplated in establishing an LPFM service...[and] are better examined separately." See *In re Creation of a Low Power Radio Service, Notice of Proposed Rulemaking*, 14 FCC Rcd. 2471 (Feb. 3, 1999). The Commission also elected not to pursue an ERS Rulemaking following the NHL's filing.

valuable and dynamic service to the public interest. Detailed herein is a framework for how ERS can best serve the public interest while minimizing the burden on the Commission by accounting for potential concerns through well-crafted rules providing regulatory certainty.

## **II) NEED FOR RULEMAKING**

6. Over the last several years, there have been successful attempts to provide ERS by companies using nascent technologies to deliver the caliber of high-quality broadcasts necessary to make the service a reality. This is generally done on a case-by-case basis through the grant of a Special Temporary Authority ("STA") issued by the FCC's Audio Division. However, the current rules do not include a reliable, standardized method for such providers to secure Commission authorization. Instead, each time that an ERS applicant wishes to broadcast at a specific venue, it must file an individualized STA request for the FCC's consideration. A STA is required because the maximum power at which an unlicensed provider may operate in the FM band is insufficient to provide ERS. Under 47 C.F.R. §15.239(b), the field strength of any emissions within a 200 kHz band is limited to 250 microvolts/meter at three meters. This is grossly insufficient to cover an area as large as a football stadium or golf course. Likewise, ERS cannot be appropriately addressed within Part 5 of the Commission's rules governing experimental (non-broadcast) radio service because ERS is a broadcast service. Because ERS does not fit comfortably under any existing service category within the Commission's rules, obtaining a STA is a prerequisite to providing ERS broadcasts.<sup>10</sup>

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<sup>10</sup> Other alternatives proposed in response to previous ERS proposals, such as FM Booster stations, are insufficient because ERS requires program origination, and cannot use alternatives that are limited to the rebroadcast of a primary station. *See, e.g., In re Amendment of Part 73 of the Rules and Regulations to Establish Event Broadcast Stations*, RM-9246 (June 24, 1996).

7. This process is inefficient, unreliable and burdensome for providers and the Commission alike. The public interest would be best served by the development of a streamlined process defining specific guidelines providing regulatory certainty to what currently necessitates case-by-case determinations made by the FCC staff. The establishment of easily applicable rules would relieve the Commission of the administrative burden of considering each case individually without concrete standards in place to guide its determinations. Developing criteria specific to the provision of ERS in the FM band would facilitate the quick and easy processing of ERS applications with appropriate consideration for the protection of all licensed facilities.

8. The creation of a new subpart within Section 73 the Commission's rules, "Subpart N," is the most efficient way to regulate ERS. Subpart N would incorporate all regulations specifically addressing ERS. The rules would share many characteristics of the previously unwritten guidelines used by Commission staff to ascertain whether a STA for ERS is appropriate. Rules would establish power levels, interference and RF protection, eligibility and duration requirements, and would require the applicant to certify that all prerequisites have been met. Subpart N would provide Commission staff and applicants with a clear and concise checklist of all relevant requirements. Once all elements of this checklist are satisfied, the requested ERS license would be granted.

### **III) LEGAL FRAMEWORK**

#### **a) Implementation of Certification-Style Application Format**

9. A certification-style form incorporating all of the relevant regulatory considerations is the most efficient manner to provide ERS while minimizing the burden on Commission staff. Applicants certifying compliance with all of the qualifications

would be granted timely approval of their ERS applications. This would be similar to the full-service FM application process, which provides for self-certification based on worksheet analysis. The certifications established for ERS, as proposed in this Petition, are based on the extensive experiments undertaken over the last decade, one of which FCC staff members observed in person.<sup>11</sup>

10. Under the regulatory approach proposed in this Petition, Commission staff would have an efficient framework to review ERS applications. An ERS license would be granted when all prerequisites are met and no additional circumstances warrant a more thorough analysis. This system would promote streamlined, methodical processing and would provide ERS operators with established guidelines to assist in the application process and in the resolution of any problems that arise. The current STA-based system does not provide easily-researched and readily available guidelines to facilitate the resolution of concerns likely to surface such as interference. The addition of Subpart N would supply all parties with concrete standards to guide their decisions.

#### **b) Power Levels**

11. As indicated above, power levels afforded by the current rules for unlicensed services are inadequate to provide ERS in most college/pro sports facilities or larger outdoor venues hosting events such as horse races and golf tournaments. Under 47 C.F.R. §15.239(b), the field strength of any emissions within a 200 kHz band is limited to 250 microvolts/meter at three meters. The power necessary to provide ERS must be sufficient to provide service not only to all of the seats in the stadium (from field level seating to the highest points of mezzanine-level sections), but also to enclosed areas such as bathrooms, hallways, luxury and press boxes.

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<sup>11</sup> NHL Petition, *supra* note 6 at 5.

12. The Petitioner proposes 10 watts as the maximum power level permissible under Subpart N for all venues with the exception of golf courses (or other large outdoor venues), for which 25 watts is the proposed limit. Based on ERS broadcasts provided at recent events, it is apparent that 10 watts is sufficient to provide ERS at a large football stadium and its immediate surrounding area (such as the entrance/exit gates, ticket windows, and stadium parking lots). Likewise, 10 watts is low enough that it is unlikely to cause interference. While 10 watts is the recommended maximum power permissible under Subpart N, certain case-by-case determinations may prove to be necessary for a limited number of special circumstances. For example, should an operator wish to provide ERS at a golf or tennis tournament, the geographical area to be covered would be significantly greater than a stadium event, and would require additional power. However, it would be prudent for the Subpart N guidelines to specify a 10 watt limit to minimize potential interference.

**c) Interference Protection**

13. Subpart N would provide FM stations the same level of interference protection currently afforded by the Commission's rules, incorporating the desired-to-undesired signal ratio used to determine interference levels. The protections in place against co-channel and first-adjacent channel interference would be retained for ERS. Likewise the procedures provided by the rules for reporting and correcting interference would remain unchanged.

14. Where there is predicted interference to second and third-adjacent channels, an applicant would be required to attach a consent statement with its application, indicating that the party affected by the projected interference has

acknowledged and consented to the potential disruption.<sup>12</sup> Without such consent, the FCC might still decide to grant the ERS license (engaging in the ad hoc analysis that it currently uses in considering ERS licenses), but by including a consent statement, applicants can ensure that this hurdle will be satisfied without any further judgment by the Commission staff.

**d) RF Protection**

15. Subpart N should establish the RF Radiation standards that govern ERS licenses based on the standards in Section 1.1307(b) of the Commission's rules. RF Radiation is not likely to be a concern for ERS. A typical antenna used for an ERS broadcast is approximately six feet long, and is fixed on a location (such as the stadium press box) where nearby persons would not be affected. However, RF radiation should be accounted for in Subpart N and the most appropriate treatment is to apply the existing rules to the new service. Provided that an ERS applicant can certify its compliance, no further analysis by the Commission staff would be necessary.

**e) Event Preapproval Process**

16. Because ERS licenses would be issued for specific events, it would be impractical to issue every license for an identical window of time. The duration of ERS licenses should be flexible to accommodate coverage of a variety of events, from two hour basketball games to tournaments spanning several weeks. The Petitioner recommends that licenses be issued for the day of the event(s) and one day prior to and following each event to allow for equipment setup, removal and testing. The typical ERS license, to broadcast an event like a football, basketball or hockey game, would be valid

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<sup>12</sup> As stated in the NHL Petition, "sports and entertainment businesses have a vested interest in properly constructing and operating indoor radio broadcast operations that do not create interference with outside broadcasting." NHL Petition, *supra* note 6 at 8-9.



for three days. While the majority of ERS licenses would be three days, certain events such as golf/tennis tournaments and the Olympics can last up to several weeks. As such, the best approach in Subpart N is to establish an event preapproval process whereby applicants would be licensed for the duration of their events, with a one-day cushion on the front and back end.

17. An exception to the standard three-day ERS license should be available for companies with contracts to provide service for extended periods of time at the same venue. For example, a company with the exclusive rights to provide ERS at all New York Yankees home games should not be forced to apply for 81 separate ERS licenses to broadcast each game during a given season. Instead, a long-term ERS license should be issued, allowing the rights holder to provide ERS at Yankee Stadium for the full season of games under a single ERS license. The Petitioner recommends that long-term ERS licenses be limited to a minimum of one month and a maximum of one full season (approximately nine months) in duration.<sup>13</sup> Although coterminous with the season, the STA would specify operation only on game days. The Petitioner recommends that aside from long-term ERS licenses, Subpart N should limit licenses to one day before/after each event for clarity purposes.

#### **f) ERS License Certification Process**

18. In addition to addressing each of the recommended checklist-style prerequisites for timely ERS approval, a successful ERS applicant must also be qualified to hold a traditional broadcast license under the Commission's existing rules. However,

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<sup>13</sup> In England, Long-Term RSLs are available to provide ERS at a "clearly defined single site" for up to five years. The Petitioner recommends a limit coterminous with the season for long-term ERS licenses in the U.S. because the rights fees for sports teams often change on an annual basis. Limiting the long-term ERS licenses to a one season term will help ensure that only providers with valid contacts to provide ERS service for a particular venue/organization are granted authorizations.

ERS licensees should not be subjected to certain requirements mandated by the rules that are designed for full-time licensees such as public interest obligations, ownership restrictions, and regulatory fees. Technical rules applicable to full service FM stations should be carried over to ERS, but rules grounded in public policy should be omitted.

19. To obtain an ERS license, an applicant should not only make the appropriate technical certifications, but also certify that it has a valid contract to provide ERS service at the event specified in the application. Absent documentation that the applicant has a contract with the event sponsor, team owner and/or venue controlling the broadcast rights to the event, the applicant should not be able to obtain a license through the streamlined process provided by Subpart N. This certification should be included in Subpart N and within the ERS license application as a mandatory prerequisite for obtaining ERS approval.

#### **IV) CONCLUSION**

20. The addition of Subpart N governing ERS is in the public interest and will assist the Commission staff and providers by creating a streamlined process governing the ERS license application process. With the necessary technology in place and ERS experiments indicating tremendous success, the time is now to put rules into place to reduce administrative burdens on the staff and create certainty for ERS operators. By establishing an Event Preapproval/Certification Process through a checklist-style system enumerated within the application for ERS, the Commission can serve the public interest by ensuring that the service moves forward in an efficient manner.

**WHEREFORE**, Sounddec LLC requests that the Commission initiate a rulemaking proceeding to establish Event Radio Services.

Respectfully submitted,

**SOUNDDEC LLC**

By:

A handwritten signature in black ink, appearing to read "Joseph M. Di Scipio", written over a horizontal line.

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